

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-555

July 17, 2000

PUBLIC UTILITIES COMMISSION
Amendments to Chapter 520
Unscheduled Tour, Charter and Water Taxi
Services in Casco Bay

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

Through this Notice, we initiate a rulemaking to amend certain parts of Chapter 520, the rule that governs unscheduled tours, charters and water taxi services in Casco Bay in accordance with 35-A M.R.S.A. § 5101-E. The proposed amendments also add provisions for unscheduled freight service in Casco Bay in accordance with 35-A M.R.S.A. § 5101-D. The Proposed Rule also includes a new application form for use by all persons seeking to provide unscheduled charter, water taxi, or freight services in Casco Bay.

II. BACKGROUND

In 1992, the Legislature amended Chapter 51 of Title 35-A M.R.S.A., relating to the regulation of ferries in Casco Bay (1992 amendments). One of the amendments, section 5101-D, added requirements for obtaining a certificate of public convenience and necessity for unscheduled freight service between mainland Cumberland County and Peaks Island, Great Diamond Island, Little Diamond Island, Long Island, Chebeague Island, and Cliff Island, or between these islands. The original 1992 amendments included a sunset provision in 35-A M.R.S.A. § 5111, which provided for the repeal of section 5101-D on July 15, 1996. This sunset provision was itself repealed in 1995 (See P.L. 1995, c. 559 § 1), and section 5101-D has henceforth provided the statutory authority for the Commission's regulation of unscheduled freight service in Casco Bay. This rulemaking is being opened to amend Chapter 520 of the Commission's rules to reflect the statutory provisions contained in section 5101-D of Title 35-A.

Section 5101-E directs the Commission to adopt rules governing unscheduled tours, charters and water taxi services. To simplify the new requirements of Chapter 520, the Proposed Rule includes an attached application specific to the requirements of this Chapter. The new application was developed separately from the Chapter 510 application for ferry service in Casco Bay and is intended only for use by persons seeking authorization for unscheduled charter, water taxi, and freight services in Casco Bay.

III. DISCUSSION OF PROPOSED AMENDMENTS

Section 1: Purpose and Scope

This is identical to section 1 of the current rule with the addition of language indicating that the rule also establishes requirements and limitations for unscheduled freight services in Casco Bay.

Section 2: Definitions

This section is identical to section 2 of the current rule with the addition of a definition of the term “freight service.” Freight service is herein defined as any commercial waterborne transportation of goods.

Section 3: Authorization Required

Section 3 of the current rule outlines the authorization and filing requirements for persons seeking to offer charter or water taxi services in Casco Bay. The Proposed Rule simply adds the phrase “or freight service” where applicable within the existing text of the rule.

Section 4: Limitations on and Requirements for the Provision of Charter Service

This section sets forth specific requirements for charter boat operation and is unchanged in the Proposed Rule.

Section 5: Limitations on the Provision of Water Taxi Service

This section imposes certain requirements on water taxi operation and is unchanged in the Proposed Rule.

Section 6: Limitations on the Provision of Freight Service

Section 6(A) mirrors the provisions in 35-A MRSA §§ 5101-D(1)(A) and 5101-D(2)(A) and describes the type of vehicles allowed as cargo on unscheduled freight trips. The statute directs the Commission to define by rule a “roll-on/roll-off” vehicle for purposes of this Chapter. We have defined roll-on/roll-off in this subsection as any vehicle “which may be wheeled or tracked and capable of operating under its own power.” In accordance with the statute, roll-on/roll-off vehicles must have a cargo weight that exceeds 5 gross tons with the exception of 4-wheel cars and trucks weighing 10 gross tons or less, unless these cars or trucks are carried in conjunction with an eligible roll-on/roll-off vehicle.

Section 6(B) mirrors the provisions of 35-A MRSA §§ 5101-D(1)(B) and 5101-D(2)(B) which define the type of freight that eligible vehicles may carry on unscheduled freight trips. The statute only allows transportation of bulk commodities, construction materials, construction equipment, emergency equipment, trash compacting or other specialty equipment, or household goods if they are transported in tractor trailers. Freight that is prohibited includes food, beverages, perishables, and wrapped or boxed freight.

The purpose of both sections 6(A) and 6(B) is to define the allowable freight services sufficiently narrowly that the providers of such services are not in direct competition with the Casco Bay Island Transit District (CBITD). The Proposed Rule is also designed to avoid unduly restricting the operation of the largely unregulated freight transportation market.

Section 6(C) reflects the legislative intent of 35-A MRSA §§ 5101-D(1)(C) and 5101-D(2)(D) by restricting the loading and unloading of transported vehicles at any dock or wharf used by CBITD during its regularly scheduled service.

Section 6(D) contains freight limitations specific to Peaks Island in accordance with 35-A MRSA § 5101-D(2)(C). This provision of the law could be referred to as the “single-vendor/single project” rule. It restricts the freight carried in vehicles on a single trip between mainland Cumberland County and Peaks Island or between Peaks Island and Great Diamond, Little Diamond, Long, Chebeague, Cliff or Bailey Island. If the freight carried in a single trip is the property of multiple owners, it must have been sold by a single vendor who must also be the owner of one of the vehicles transported on the trip. Alternatively, the freight may be the property of multiple owners if it is intended for a single project to be completed by an owner of one of the vehicles transported on the trip. This restriction is peculiar only to Peaks Island and does not have any bearing on other unscheduled freight services in Casco Bay.

Section 6(E) contains requirements for a rate schedule as outlined in section 5101-D(3). The carrier is required to file a rate schedule with the Commission that includes both the hourly and minimum fee, the minimum fee not to be less than one hour at the hourly rate.

Section 7: Waiver

Section 7 of the Proposed Rule provides the standard conditions for the Commission to waive the requirements of the rule for good cause shown.

IV. RULEMAKING PROCEDURES

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. Written comments on the Proposed Rule may be filed with the Administrative Director no later than August 25, 2000. Please refer to the docket number of this proceeding (Docket No. 2000-555) when submitting comments.

No public hearing on this matter is presently scheduled, but one will be held if requested by any five interested persons. Persons wishing to request a public hearing on this rule must notify the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018, on or before August 7, 2000.

V. FISCAL AND ECONOMIC EFFECTS

In accordance with 5 M.R.S.A. § 8057-A(1), the Commission expects the fiscal impact of this Rule to be minimal. However, we invite all interested parties to comment on the fiscal impact and all other implications of this Proposed Rule.

VI. SERVICE

The Administrative Director shall send copies of this Order and the attached Rule to:

1. Casco Bay Island Transit District;
2. All certified water carriers, including water taxis, and all parties to Docket No. 98-161.
3. All persons who have filed a written request with the Commission within the last year for Notice of Rulemaking;
4. All persons who have filed for permanent or seasonal Certificates of Public Convenience and Necessity for ferry services in Casco Bay;
5. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and
6. Executive Director of the Legislative Council, State House Station 115, Augusta, Maine 04333 (20 copies).

Accordingly, we

ORDER

1. That the Administrative Director send copies of this Order and the attached Proposed Rule to all the persons listed above and compile a service list of all such persons and any persons submitting written comments on the Proposed Rule;
2. That the Administrative Director send a copy of this Order to the Secretary of State for publication in accordance with 5 M.R.S.A. § 8053; and
3. That this Order will also be posted on the Commission's web site at www.state.me.us/mpuc.

Dated at Augusta, Maine, this 17th day of July, 2000.

BY ORDER OF THE COMMISSION

Raymond J. Robichaud
Acting Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond